IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONAS NO.742/2005 IN SUIT NO.2078 OF 2005

Mr. Ajit A. Sunkerseth and ors. ..Plaintiffs.
Vs.
Orbit Constructions & Realtors Pvt. Ltd. and ors.
..Defendants.

Mr.Aditya Khanna i/by A.R. Vhole for the Plaintiff.
Mr.Dinesh Pedneual i/by Khaitan & Jayakar for the applicants.
Mr. A.K. Bateli for the Respondent No.1.

CORAM : A.M. KHANWILKAR,J.
DATED : 27/9/2005.

PC:

1. Heard counsel for the parties. Perused the pleadings.

2. The short question in the present proceeding is whether the presence of the applicants will be necessary for full, omplete and effectual adjudication of the suit claim. The plaintiffs are claiming to be the owners in respect of the suit property which is portion of the property belonging to Sunkerseth family. It is admitted position that the applicants are claiming through Prabhakar who was one of the constituent of Sunkerseth family. It appears that the lease deed was executed in the year 1904. However, the claim of the concerned parties of Sunkerseth was resolved in proceedings taken out before this court bearing Suit No.298/1956 by consent decree dated 29.3.1997. According to the applicants,. they have 1/3rd right in respect of the suit property which right is claimed through Prabhakar Raoji Sunkerseth- predecessor of the applicants who was

defendant No.2 to the said suit and the plaintiffs are claiming through defendant Nos. 5 to 13 in that suit. In my opinion, therefore, the applicants are not only proper but necessary parties. The presence of the applicants would be necessary for full, complete and effectual adjudication of the suit claim, as the plaintiffs are seeking declaration that they are owners of the suit property described in Exh.B and that the defendants have no right, title and interest therein whatsoever. According to the plaintiffs, however, the applicants have no claim in the suit property. For that purpose, reliance is placed by the counsel on the consent terms, which according to him will have to be read with the lease deed of 1904 to ascertain whether the applicants or their predecessors has had any right in the suit property. Prima facie, there is substance in the stand taken on behalf of the applicants that their predecessor Prabhakar had 1/3rd right in the suit property. If it is so, all issues on merits will have to be considered at the trial of the suit. Suffice it to observe that the presence of applicants would be necessary as they are claiming right in the suit property being descendants of Sunkerseth family and according to them such right exists in terms of the consent terms dated 29.3.1997.

3. Accordingly, this chamber summons is allowed. The plaintiffs are directed to carry out the amendment within four weeks from today. No order as to costs.

(A.M. KHANWILKAR, J.)